

ADVISORY OPINION 95-005

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

April 13, 1995

Mr. Jim Carloss, Jr.
Kentucky Association of Realtors
161 Prosperous Place
Lexington, Kentucky 40509

Dear Mr. Carloss:

This is in response to your March 13, 1995, letter in which you request an advisory opinion regarding whether the Kentucky Association of Realtors ("KAR"), a Kentucky corporation, may establish an escrow account at the KAR's depository bank for the transmission of funds to the State PAC and to the National Association of Realtor's PAC ("NAR/RPAC"). As stated in a December 19, 1994 memorandum provided to the Registry, the account will be established in the KAR's depository bank as a "Non-PAC" account, but will be assigned KAR's federal tax identification number with the realtor's PAC listed as payee. You wish to establish a transmittal escrow account to prevent the NAR/RPAC from being taxed on PAC contributions. Specifically, Section 527 of the Internal Revenue Code taxes realtor contributions deposited into the state PAC account which are subsequently transmitted to the NAR/RPAC and used for purposes other than making contributions to federal candidates. Alternatively, you ask whether KAR may solicit contributions from its Kentucky contributors provided they issue separate checks to the state PAC and to the federal PAC.

In response to your first question, Section 150 of the Kentucky Constitution and KRS 121.025(1) strictly prohibit corporations from contributing, either directly or indirectly, toward the nomination or election of any political candidate.

KRS 121.025 provides that:

No corporation authorized to do business in this state or in another state, and no officer or agent of a corporation on its behalf, shall contribute, either directly or indirectly, any money, service, or other thing of value towards the nomination or election of any state, county, city, or district officer in this state, or pay, promise, loan or become liable in any way for any money or other valuable thing on behalf of any candidate for office at any election, primary or nominating convention held in this state.

Based on the facts which you have provided, the escrow account would be established by KAR, a corporation, and would be identified by KAR's federal tax identification number. The account would be a corporate account insofar as it is established by KAR and assigned its tax identification number. Therefore, contributions which are paid into this account and subsequently transferred to the KAR PAC would constitute corporate contributions in violation of KRS 121.025 and Section 150 of the Kentucky Constitution.

In response to your second question, individual realtors may contribute directly to the KAR PAC and to the NAR/RPAC by issuing separate checks. This procedure would ensure that any corporate funds and KAR PAC funds are not commingled through a deposit into a single account. The "separate check" method was approved in a previous advisory opinion, 92-005 (attached), to avoid commingling of corporate and PAC funds.

Sincerely,

Rosemary F. Center
General Counsel

RFC:MSP/db